

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b))

Description of the case.

No. W.P. 1752 / 02 S/B

Ganesh Datt Tiwari,

aged about 23 years son of late Sri Bachi

Ram

Vs

Uco Bank, 10 B.T.M. Sarani

(Brauborne Road Kolkatta),

Through its General Manager.

Approved for reporting.

Not approved for reporting

Date of decision 7.7.2005

Initial of Judge

RESERVED

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL

WRIT PETITION NO. 1752 (S/B) OF 2002

Ganesh Datt Tiwari, aged about 23 years son of late Shri Bachi Ram Tiwari, resident of Jagat Pura, 10-Rudrapur, District Udham Singh Nagar.

.....Petitioner.

Versus

1. Uco Bank, 10 B.T.M., Sarani (Brauborne Road Kolkatta), through its General Manager.
2. Chairman/Managing Director, Uco Bank, 10 B.T.M. Sarani (Bakuborne Road Kokkata),
3. Chief Officer, Uco Bank, Regional Office 35 A/8, Rampur Garden, Bareilly.
4. The Senior Manager, Uco Bank Rudrapur, District Udham Singh Nagar.

.....Respondents.

Dated: 07.07.2005

Hon'ble Rajesh Tandon, J.

Heard Sri Paresh Tripathi, learned counsel for the petitioner and Sri B.M.S. Pingal and Sri R.S. Kutiyla, learned counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 27.11.2002 passed by the Chief Officer, Uco Bank, Regional Office 35 A/8, Rampur Garden, Bareilly and further has prayed for a writ of mandamus commanding the respondents to appoint the petitioner on compassionate ground in the establishment of the Uco Bank.

Briefly stated, the father of the petitioner namely Sri Bachchi Ram Tiwari, who was employed as Daftari in the Uco Bank at Rudrapur District Udham Singh Nagar died on 23.07.1997.

The petitioner has submitted that the brother of the petitioner moved an application before the respondent no. 4 for being given the appointment on compassionate ground in the

month of September, 1997. The Bank wrote a letter asking various information and all that information were submitted to the respondents, but no appointment was given to the petitioner.

At the time of his father's death the petitioner was studying in High School and passed High School Examination in the year 1998 and thereafter Intermediate Examination in the year, 2001 and passed his B.A. 1st year in the year 2002. Due to poor economic condition his elder brother could not proceed his study after Class VIII and started doing labour. The family condition of the petitioner is deteriorating day by day, therefore, he applied for appointment under Dying in Harness Rules. His mother Smt. Anandi Devi and brother Rajendra Tiwari have also submitted their affidavits swearing that they have no objection if appointment is given to the plaintiff in the Bank on compassionate ground. The petitioner submitted his application to the Assistant General Manager of the Bank and who in turn submitted various documents and letter to the higher authorities on 18.09.2002.

Again the petitioner submitted a reminder to the respondent no. 4 with regard to his appointment on compassionate ground. The application of the petitioner for the appointment on compassionate ground has been rejected by the respondents vide order 27.11.2002. Hence the petition.

The contention of the petitioner is that his application was rejected in illegal and arbitrary manner and on frivolous and baseless grounds and the petitioner has submitted that the application for appointment on compassionate ground was submitted to the Bank within three months after the death of the petitioner's father but the Bank has not taken any action for more than five years and thereafter, asked the petitioner to file

the application on prescribed form and the respondents have submitted the counter affidavit and have denied the allegations made by the petitioner. The respondents have submitted that Sri Bachchi Ram Tiwari died at the age of 57 years three months after the cut off age 55 years and as such petitioner's brother Sri Rajendra Singh was not entitled for compassionate appointment in the Bank.

The respondents have further submitted that the father of the petitioner died on 23.07.1997 at the age of 57 years and three months and the application was submitted by the petitioner only on 11.09.2002, which was beyond the scope of the scheme of the Bank.

According to the respondents the application shall always be submitted to the Bank within one year after the death of the deceased employee. The proposition for the appointment of the petitioner on compassionate ground was considered by the Deputy General Manager of the Head Office at Kolkata and the same was rejected vide its order dated 4th October, 2002.

The respondents have also submitted that the Competent Authority before rejecting the application of the petitioner had also examined the eligibility criteria of the petitioner in the light of the scheme formulated vide Circular No. CHO/PMJ/19/99 dated 21.09.1999.

The income criteria of the family of the deceased employee is becoming more than 60 percent of the salary of the deceased employee and as such neither the family of the petitioner is eligible for appointment on compassionate ground nor entitled any lump-sum amount as compensation.

Along with the counter affidavit, the respondents filed the copy of the letter dated 4th October, 2002 of Deputy General Manager Personnel, copy of the letter of Chief Officer dated

27.11.2002 and assessment of the monthly income of the family of the petitioner

The scheme of appointment on compassionate ground has been formulated to mitigate hardship due to sudden death of the bread-earner of the family.

The Apex Court in the case of ***Smt. Sushma Gosain and Others Vs. Union of India and other*** 1994 SCC 468 has held as under:-

“We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent 2 to appoint Sushma Gosain appellant in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today.”

The Bank has formulated an scheme for grant of compassionate appointment to the dependants of its employees dying in harness. In that scheme some relaxation in the rules has been provided for compassionate appointment. The relaxation is quoted as under:--

“The Hon’ble Supreme Court of India in its judgment in the case of Shri Umesh Kumar Nagpal Vs. State of Haryana &

Others, has observed inter alia, as a rule, appointments in the public services should be made strictly on the basis of open notification of application on merit. However, to this general rule there are some exceptions in the interest of justice and one such exception is in favour of the dependants of an employee dying harness and leaving his family without any means of livelihood.” The post of Class IVth is the lowest post and the deceased was working as Class IV employee in the Bank and after his death, economic condition of the family cannot be said to be very well as the petitioner has submitted that his elder brother could not continue his study after 8th Class and doing labour work to earn his livelihood. Monthly income of Rs. 3206 from family pension cannot be said to be sufficient to earn the livelihood of a family in these hard days of inflation.

In view of the aforesaid observation, the petitioner shall be at liberty to move a fresh representation to the respondents for appointment on compassionate ground and respondents are directed to sympathetically consider the same within two months after the receipt of the certified copy of this order.

Writ petition is disposed of. No order as to costs.

(RAJESH TANDON, J.)

Dated: July 7, 2005

Dhyani